

**UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OKLAHOMA**

**TOPPERS CABARET, INC., d/b/a** )  
**CLOUD NINE GENTLEMAN’S CLUB,** )

**Plaintiff,** )

**v.** )

**Case No. 04-CV-548-JHP-FHM**

**ATLANTIC CASUALTY INSURANCE** )  
**COMPANY, a North Carolina corporation,** )

**Defendant.** )

**ORDER and OPINION**

This matter comes before the Court pursuant to the Report and Recommendation filed by Magistrate Judge Frank H. McCarthy on January 9, 2006 (Dkt. 45) with regard to Defendant’s Motion for Attorney Fees (Dkt. 17) and Supplemental Application for Attorney Fees (Dkt. 34). Also before the Court are Plaintiff’s Objections to the Magistrate Judge’s Report, and Defendant’s Response thereto. Upon *de novo* review of these issues, the Court finds as follows:

The parties did not dispute that Defendant, as the prevailing party, is entitled to an award of reasonable attorney fees under 36 Okla. Stat. § 3629; they only disputed the amount. Specifically, Plaintiff objected to the hourly rate used to calculate the award, and to certain specific time entries.

The Magistrate Judge adopted the hourly rate actually charged to calculate the fees claimed in Defendant’s Motion (*i.e.*, \$195, \$175, and \$145 per hour for the billing attorneys and \$105 for the legal assistants), and used the discount rate provided by Defendants for those fees claimed in Defendant’s Application (*i.e.*, \$255, \$205, and \$165 per hour for the billing attorneys

and \$105 for the legal assistants). Plaintiff argues that a rate based on counsel's years of experience (*i.e.*, \$140 per hour) should be used to calculate the award in both instances. The Court adopts the Magistrate Judge's reasoning to support the use of the actual rate. The Court further finds that this rate should be used to calculate the fees requested in both the Motion and the Application. The Court finds that the use of the actual rate is both reasonable in and of itself, and presents a reasonable compromise in face of Plaintiff's more general objection that the award as calculated by the Magistrate Judge was still excessive. In particular, the Court notes that certain of the fees claimed in Defendant's Application did appear to be duplicative and/or overstated, such that an overall reduction is warranted.

The Magistrate Judge also reviewed Plaintiff's specific objections to the time entries listed by Defendant, deducted six (6) entries which were duplicative of other work, and adjusted the total award accordingly. The Court adopts these findings. Similarly, the Magistrate Judge reviewed the amount of time Defendant spent preparing its fee request, found the time to be overstated, and therefore reduced the total award. The Court agrees with Plaintiff that the amount of time spent preparing the fee request seems unreasonable, and further reduces the amount as discussed above, by using the actual rate rather than the discount rate to calculate the award.

The Report and Recommendation having been adopted in part, the Court hereby finds that attorney fees in the total amount of \$29,580.58 shall be awarded to Defendant as the prevailing party, calculated as follows:

**Defendant's Motion for Attorney Fees (Dkt. 17)**

<u>Attorney</u>		
LBL	17.6 hrs - .5 hrs = 17.1 hrs @ \$195:	3,334.50
MFB	107.2 hrs @ \$175:	18,760.00
JFS	1.7 hrs - 1.3 hrs = .4 hrs @ \$145:	58.00
<u>Legal</u>		
<u>Assistant</u>		
CSJ	11 hrs - 6 hrs = 5 hrs @ \$105:	525.00
WAH	3.7 hrs - 3.7 hrs = 0	- 0 -
	Subtotal (fees):	\$22,677.50
	Subtotal (costs):	\$562.58
	Subtotal from Motion:	\$23,240.08

**Defendant's Supplemental Application (Dkt. 34)**

<u>Attorney</u>		
LBL	.9 hrs @ \$195:	175.50
MFB	17.1 hrs - 3.7 hrs = 13.4 hrs @ \$175:	2345.00
JFS	20.8 hrs @ \$145:	3016.00
<u>Legal</u>		
<u>Assistant</u>		
WAH	16 hrs - 8 hrs = 8 hrs @ \$105:	804.00
	Subtotal from Application:	\$6340.50

IT IS SO ORDERED this 7<sup>th</sup> day of June 2006.

  
 James H. Payne  
 United States District Judge  
 Northern District of Oklahoma